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No. 374

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

EDWARD J. SHAUGHNESSY, as District Director of Immigration and Naturalization for the District of New York,
Petitioner,

vs.

MAMPRIL SEQUEIRA PEDREIRO.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

ADDENDUM TO BRIEF FOR RESPONDENT

NEMEROFF, JELLINE, DANZIG & PALEY,
Attorneys for Respondent.

AARON L. DANZIG,
of Counsel.

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ADDENDUM TO BRIEF FOR RESPONDENT

Pertaining to both points raised in the brief of the respondent is the late case, *Aguilera-Flores* v. *Landon,* 125 Fed. Supp. 55, decided by the United States District Court, Southern District of California, on September 22, 1954, holding that an alien has the right to bring a petition for review of an outstanding deportation order against him in line with the theory of *Williams* v. *Fanning* (332 U. S. 490, 68 S. Ct. 188), and holding likewise that the district director is the appropriate party defendant, no other being required, since no affirmative relief is sought but merely injunctive relief against the district director carrying out a deportation order.

This case should be contrasted with a decision by the same court on the same day, *Laureano-Gonzalez* v. *Main,* 125 Fed. Supp. 60, where in a suit seeking *affirmative* action on

the part of the Attorney General, it was held that the Attorney General was a necessary party defendant.

* * * * * *

Relevant to Point One of the brief, the question of whether or not the alien is limited to the remedy of habeas corpus, is the latest change in the administrative procedure adopted by the United States Department of Justice. Whereas, formerly the procedure, when a deportation order had been issued was to require the alien to surrender at Ellis Island or some other detention station where he was to await actual deportation, this procedure has now been changed and the Attorney General has announced publicly that aliens will not be subjected to such detention except in the cases of severe security risks.

Accordingly, the procedure now adopted by the Immigration Service is evidenced by Exhibit "A" attached hereto, in which the alien is asked to surrender just a few hours prior to embarkation time.

These facts are brought to the attention of the court because if the position of the petitioner is to be sustained, to wit, that the alien must first surrender and then bring habeas corpus proceedings, a travesty is made of his rights. It is elementary that the alien must be in custody before the court can obtain jurisdiction in habeas corpus proceedings. Thus the alien must within a few hours conduct a mad race to preserve the fundamental rights given to him by the law of the land.

This latest change in procedure thus only serves to point up the inadequacy of the remedy asserted by the government to be the sole remedy of the alien.

Respectfully submitted,

NEMEROFF, JELLINE, DANZIG & PALEY,
Attorneys for Respondent.

AARON L. DANZIG,
of Counsel.

EXHIBIT "A"—SPECIMEN FORM

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
70 COLUMBUS AVENUE
NEW YORK 23, N. Y.

March 16, 1955

3-2662
10/27/54

Please refer to this
File Number: A9 544 161 DDPB

National Surety Corporation
110 John Street
New York, N. Y.

Dear Sirs:

Formal demand is made upon you to deliver ANTONIO CABRITA MEALHA into the custody of an officer of this Service at Pier 84 located at the foot of West 44th Street, New York, N. Y. on April 6, 1955 for deportation to Lisbon, Portugal on the SS "Vulcania" of the Italian Line. Such surrender is to be made at the embarkation booth, tourist class, at least two hours prior to embarkation time.

You are informed that should delivery not be effected in accordance with this demand appropriate action will be taken with a view to breaching the outstanding bond.

It will be necessary for the deportee to communicate promptly with the steamship line to ascertain exact embarkation time and any changes in sailing schedule; to obtain tags and labels for baggage; to obtain the time baggage must be delivered to the pier; and to obtain information as to the amount of baggage permitted free of charge. The deportee will be required to pay for any excess baggage costs.

You are requested to acknowledge receipt of this letter by placing your name upon the carbon copy enclosed, which may be returned in the attached self-addressed envelope requiring no postage.

Very truly yours,

EDW. H. SHAUGHNESSY
District Director
New York District

By PHILIP FORMAN S/

PHILIP FORMAN, Chief
Detention and Deportation Section

cc: Aaron L. Danzig
350 Fifth Avenue
New York, N. Y.

REGISTERED MAIL
RETURN RECEIPT REQUESTED